

### REMARKS

Upon entry of the foregoing amendments, claims 23-30 remain pending. Claims 31-44 have been canceled, without prejudice, though claims 31 - 44 have been withdrawn based on the provisional oral election, without traverse, by Applicant's attorney William W. Schwarze during a telephone conference with the Examiner on May 26, 2005, to prosecute in this application claims 23 -30, without prejudice to the inclusion of the non-elected claims in one or more related applications. Applicant hereby confirms this oral election. Claim 23 is the only pending, non-withdrawn independent claim.

Applicant is pleased that the Office Action contains no prior art rejections. Applicant believes that the foregoing amendments, supported as indicated below, overcome the rejections based on non-statutory subject matter, indefiniteness and lack of enablement.

Claims 23 and 24 have been amended to indicate that the gene is an isolated gene, as suggested by the Examiner at page 2 of the Office Action. This is supported by the procedure set forth, for example, at pages 15-22 of the application, the isolation being noted at page 22, lines 13-17. Thus, no new matter has been added and the rejection based on non-statutory subject matter has been overcome. Reconsideration and withdrawal of this rejection are respectfully solicited.

Claims 23-30 were rejected due to the lack, directly in the claims, of an indication of the stringent conditions recited in claims 23 and 26, even though pages 14 and 15 of the specification describe suitable stringent conditions. Independent claim 23 and claim 26, each referring to an amino acid sequence encoded by a DNA that hybridizes under stringent conditions with a DNA having a nucleotide sequence that is complementary to SEQ ID NO:2, have been amended to set forth suitable stringent conditions as supported at pages 14-15 of the specification. As a result, the amendment is supported by the application as filed and reconsideration and withdrawal of the indefiniteness rejection is respectfully solicited.

The remaining rejections are based on the Examiner's assertion of lack of enablement due to certain aspects of the claims relating to a homology of 80% or more. While Applicant believes that one skilled in the art, following the procedures set forth in this application and techniques known to produce homologous nucleotide and amino acid sequences could readily

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produce operative homologous sequences where the homology is 80% or more, the claims have been amended to recite that the homology is now 90% or more, as set forth at page 14, line 2, of the application as filed. The procedures are set forth in the beginning of the last paragraph at page 10 through page 13. Based on these amendments, fully supported by the application as filed, Applicant respectfully requests reconsideration and withdrawal of the lack of enablement rejections.

The application is now considered to be in condition for allowance. An early Notice of Allowance is respectfully requested. If any issues remain, the Examiner is invited to contact the undersigned attorney by telephone to discuss this matter.

Respectfully submitted,

**NOBUYA ITOH**

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(Date)

By:

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Enclosures: Petition for One-Month Extension of Time